

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4508 OF 2006
IN
SUMMARY SUIT NO. 1989 OF 2006

M/s. Reliance Communication &
Infrastructure Limited. .. Plaintiffs.

V/s.

M/s. TVC SKY SHOP Ltd., .. Defendants.

Ms.Mili Thakker i/by Dave & Co. for the Plaintiffs.

Mr.Manish Mistry i/by M/s.M.P.Vashi & Associates for the
Defendants.

CORAM : S. A. BOBDE, J.

DATED : 18th JANUARY, 2007.

P.C.:

. This is an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the decree passed by this court on 7th November, 2006.

2. Upon hearing the parties, it is clear that the present application under Order 9 Rule 13, has no merit whatsoever since perusal of the decree which is sought to be set aside, shows that the applicant/judgment debtor was not exparte but was represented by an Advocate. More-over, while passing the decree, the learned Judge has stated that the record is perused and

that the judgment debtor has no defence. Order 9 Rule 13 reads as follows :

. "13. Setting aside decree ex parte against defendant.-- In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

. Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

. [Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

. [Explanation.-- Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]

3. It is apparent from the above provisions that both the grounds contemplated by Rule 13 for setting aside the decree, are not available. This is not a case

where the judgment debtor claims that the summons was not duly served, nor is it a case where the judgment debtor states that he was prevented by sufficient cause from appearing when the suit was called out for hearing.

4. There is no merit in the motion, which is hereby dismissed.

(S.A.BOBDE, J.)

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